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# Defendant-Related Characteristics and the Bail Decision

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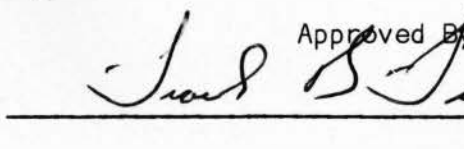

, Advisor

# DEFENDANT-RELATED CHARACTERISTICS AND THE BAIL DECISION

A thesis submitted to the
State University College at Brockport Graduate School
in partial fulfillment of the requirements
for the degree of Master of Arts

By

Alice J. Zuvers

May 1971

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Director of Thesis: Dr. Frank Feigert

A sample of the defendants arraigned in the Criminal Court of Rochester, New York in 1970 was studied to determine the effects (if any) of defendant-related characteristics on the bail decision.

Attention was focused on the literature on bail to determine the nature of the bail system in the United States. Numerous writers have advocated that the present-day, widely practiced monetary bail system be reformed. They assert that the system is unfair to the poor, for they are retained in jail prior to trial, because they cannot afford to post bail or pay the bondsman's premium. On the other hand, persons with funds adequate to make bail are released pending trial. Several empirical studies have shown the influence pretrial detention has on society, on the defendant, and on the disposition of the case.

There is a distinct lack of empirical research in the area of defendant-related characteristics which might influence the bail decision. This study is an attempt to fill that particular research void. Several legitimate characteristics, i.e. the type of crime, whether or not the charge is single or multiple, the extent and type of the defendant's previous criminal record, and the family and community ties of the defendant, are viewed to determine their effects(s) (if any) on the bail decision. Three non-legitimate characteristics,

i.e. race, sex, and age, are viewed to ascertain their effect (s) (if any) on the bail decision.

This study found that several of the defendant-related characteristics do apparently influence the bail decision. Knowledge of these non-judicial inequalities in the bail system will aid reformers in their efforts to change the monetary bail system.

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## Introduction

A review of the literature on bail indicated a lack of empirical research on the characteristics that may influence the bail decision. Although there are other categories of characteristics, e.g. judicial variables, that may influence the bail decision, this study concentrates on just one facet of the bail decision. Concentration is on the defendant-related characteristics that may influence the bail decision.

Data were gathered on a sample of the cases before the Rochester, New York Criminal Court in 1970. The primary reason for selecting the Rochester Criminal Court for study was its convenience to this writer. However, it was chosen, over the numerous smaller communities that surround Rochester, because it is an urban center, it has a diverse racial population, it has a relatively high crime rate in comparison to the surrounding communities, and because of the breadth of the criminal charges arraigned in the court.

Since this is an exploratory study, no inference is drawn between results of this study and criminal courts elsewhere in the United States.

Chapter I reviews the literature on bail. Chapter II discusses the research design, especially the gathering of data and operational definitions. The sample has a large number of defendants charged with public intoxication--a violation offense. Due to the large number of such cases, some of the research results are greatly influenced by variables associated especially with these cases. For example, the lack of an address for the defendant and the fact that a defendant has an alias. Chapter III contains the analysis of the data. Chapter IV summarizes the results of the research and offers suggestions for further research.

Chapter I

# A Review of the Literature on Bail

## The History of Bail

The legal system of the United States traces its origin mainly to the customs and laws of England. The bail system of the United States is an evolution of the bail system initiated in pre Norman England.[1]

Although there are similar words in other languages (Bārrevz in Greek means "To deliver into hands" and baille in French means "To deliver")[2] our present word "bail" has an old English derivation.

> Baily is an old Saxon word and signifieth a safekeeper or protector . . . and therefore when a man upon surety is delivered out of prison . . . he is delivered into bayle-- that is, into their safekeeping or protection from prison.[3]

Presently in the United States the term "bail" has several meanings. Bail can mean security given, i.e. the property deposited to pledge the court appearance of the accused when it is required. It can also mean the person that provides the security for the accused's court appearance. "Bail" can also mean the granting of freedom to a person under arrest.[4]

The conditions of jails in medieval England were so poor that sheriffs began to use their own discretionary powers to release a

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[1] "Bail: An Ancient Practice Reexamined," Yale Law Journal, XLI (May, 1961), p. 966.

[2] Ronald Goldfarb, Ransom: A Critique of the American Bail System (New York: Harper & Row, 1965), p. 6.

[3] Ibid.

[4] Charles S. Desmond, "Bail, Ancient and Modern," Buffalo Law Review, I (Spring, 1952), p. 245.

prisoner. The release was given upon the promise of the prisoner, or a third party (the surety) that the prisoner would appear for trial.[5] This system had great practicality for several reasons: there was no allocation of funds by feudal lords to care for prisoners, jails were illkept and disease ridden, trials were often delayed because justices traveled from one locale to another and people were bound to their land areas. Thus, since people usually had neither the means nor the inclination to travel, there was little fear on the part of the local sheriff that the accused would flee to avoid prosecution.[6]

The Statute of Westminster in 1275[7] was an attempt to systematize these ad hoc arrangements between the accused and the sheriff.[8] In its attempt to standardize the practice of bail the Statute: 1) specified conditions under which pretrial release was allowable, 2) limited the sheriff's power to determine what constituted sufficient security for each case, and 3) formalized the procedure by which a third party or surety would assume personal responsibility for the appearance of the accused in court. This assurance by the surety was given with the understanding that the penalty was forfeiture of his own property, should the accused not appear for trial.[9] The Statute of Westminster also specified which offenses were not bailable.[10]

Gradually the bailing functions were transferred from the sheriffs to the justices of the peace. The common law rules that evolved for

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[5] Daniel J. Freed and Patricia M. Wald, Bail in the United States: 1964 (Washington, D.C., 1964), p. 1.

[6] Harry Subin, "Preventive Detention: Bail for the Rich, Jail for the Poor," Buffalo Law Review, CCXII (March 24, 1971), p. 364.

[7] Ibid.

[8] "Bail: An Ancient Practice Reexamined," op. cit.

[9] Ibid.

[10] Freed and Wald, op. cit.

setting the amount of bail were usually based upon the character of the accused, the nature of the charge, and the weight of the evidence against the accused.[11] However, the judges frequently exercised a great deal of discretionary power when deciding to grant or deny bail requests.[12]

The Bill of Rights of 1688 gave persons protection against excessive bail.[13] More recent statutes have elaborated the early English procedure for obtaining bail. However, the present system is an assortment of traditions and new ideas. Yet the English system is not based on a uniform perception of the bail functions.[14]

The bail system in the United States, as stated previously, evolved from the English system. However, the English system was not adopted without some revisions. The founding fathers instituted several statutes containing freedom guarantees. One early statute established the federal "right to bail." This statute, The Judiciary Act of 1789, was passed by the first session of the new Congress. It provided for bail as a matter of right in noncapital crime cases. It also gave the judges of specified courts discretionary power to issue bail even when the crime was one that was punishable by death.[15] The theory behind the federal statute was that a person accused of a crime need not be detained in prison or undergo punishment until he has been adjudged guilty in the

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[11] Ibid.

[12] "Bail: An Ancient Practice Reexamined," p. 967.

[13] Freed and Wald, op. cit.

[14] "Bail: An Ancient Practice Reexamined," op. cit., p. 966.

[15] Robert L. Sandolm, "Constitutional Law--Right to Bail," Michigan Law Review, LI (January 1953), p. 391.

court of last resort.[16] The purpose of the bail system in the United States is "to release from pretrial detention as many arrestees as possible while providing reasonable assurance that they will return promptly for their trials."[17]

However, this emphasis on the individual's absolute right to bail lead to practical difficulties. Defendants who perceived a dim chance of acquittal often fled to the western territories. Private sureties found that they could not conduct nation-wide searches for their charges. Gradually the promise (of the surety) to produce the accused became a promise to pay money should the accused fail to appear in court.[18] In addition to particular statutes dealing with the bail system, the Eighth Amendment to the Constitution, adopted in 1791, stated that excessive bail should not be set.

Commonly accepted practices also contributed to the established framework for the bail system. It has been further developed through court decisions. In 1835 the Supreme Court elaborated on the reason for bail in criminal cases, i.e.,

> . . . [it] is taken to secure the due attendance of the party accused, to answer the indictment, and to submit to a trial, and the judgment of the court thereon. It is not designed as a satisfaction for the offense . . . but as a means of compelling the party to submit to the trial and punishment which the law ordains for his offense.[19]

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[16] Ibid., p. 393.

[17] John Hoskins, "Tinkering With the California Bail System," California Law Review, LVI (August, 1968), p. 1134.

[18] "Bail: An Ancient Practice Reexamined," op. cit., p. 967.

[19] Goldfarb, op. cit., p. 10.

The Supreme Court in 1932 reaffirmed the need for a bail system when it said that the time between the institution of the formal charge and the trial was ". . . perhaps the most critical period of the proceeding . . . when consultation, through going investigation and preparation (are) vitally important . . ."[20]

The complexity of the judicial system in the United States contributes to the complexity of the bail system. The federal system provides for national and state courts. Each state has its own particular system of local courts. Thus, because fifty-two legal systems exist in this country (fifty states, the federal government, and the District of Columbia), it is virtually impossible to set forth any law on bail that is acceptable throughout the country. Federal and state legislation has aimed at providing guidelines for the use of bail. These guidelines have been established, as has the bail system itself

> . . . to provide a means of reconciling the conflicting interests of the defendant who desires to remain free of pretrial detention, and the state, which desires the defendant to appear promptly for his trial.[21]

The Federal Rules of Criminal Procedure, as amended in 1951, state that, "A person arrested for an offense not punishable by death shall be admitted to bail."[22] However, only thirty-nine states guarantee a right bail before conviction in non-capital cases.[23] The present laws usually allow for judicial discretion in setting or denying bail in capital cases.[24] This judicial discretion is often the major factor in

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[20] Ibid., p. 9.

[21] Hoskins, op. cit., p. 1135.

[22] Sandolm, op. cit., p. 391.

[23] Freed and Wald, op. cit., p. 1.

[24] Goldfarb, op. cit., p. 11.

whether an accused person retains his freedom prior to trial. Since there are no set rules, the judge often uses common sense and experience while weighing the factors in a particular case.[25] Judges also base their bail decision on the defendant's demeanor in court.[26] The judge must also weigh statistics. Statistics show that capital crimes are usually one-time offenses while petty offenses are frequently repeated.[27] Thus, perhaps a great danger to society exists when the accused in a non-capital case is freed on bail.

The generally accepted right to bail is applicable only before conviction. Only eighteen states guarantee the right of bail after conviction, pending appeal of cases less than capital.[28]

The bail system in the United States has been oriented around money. This is due to the mobility of the society. This monetary bail system has frequently worked to favor the rich and disfavor the poor, a topic which will be treated later.[29]

The Federal Bail Reform Act of 1966 was an attempt to make the bail system more equitable. The Act represents an attempt to move away from a money oriented system and toward a more flexible and individualized system that would ". . . assure that all persons, regardless of their financial status, shall not needlessly be detained pending their (court)

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[25] Desmond, op. cit., p. 24.

[26] "Judicial Discretion in Granting Bail," St. John's Law Review, XXVII (December, 1952), p. 64.

[27] Ibid.

[28] "The Administration of Bail," Yale Law Journal, XLI (December, 1931), p. 295.

[29] Neil Fabricant, "Bail As a Preferred Freedom and the Failures of New York's Revision," Buffalo Law Review, XVIII (1968-1969), p. 303.

appearance . . . when detention serves neither the ends of justice nor the public interest."[30] This new approach is based on the elevation of the right to pretrial freedom in the hierarchy of personal liberties.[31]

The Federal Bail Reform Act established an order of priorities. It required the court to impose the least burdensome non-financial condition of pretrial release which would insure the defendant's future court appearance.[32] The Act authorized eight different forms of bail: 1) cash bail, 2) insurance company bail bond, 3) secured appearance bond, 4) secured surety bond, 5) partially secured surety bond, 6) partially secured appearance bond, 7) an unsecured appearance bond and 8) an unsecured surety bond.[33] Once bail has been set, the magistrate is not bound by that amount. He may, at any time, revise the amount. However, only in extreme cases will an appellate court reduce the bail amount previously set.[34]

Lower courts tend to have several reasons for setting high bail, i.e., bail in excess of that usually set for a particular crime. The reasons: 1) to prevent release when flight is likely, 2) to prevent the recurrence of crime by the accused that is believed to be a danger to society, 3) to punish the accused, i.e. give him exposure to jail, 4) because of an adverse emotional response toward a particular crime or criminal, and 5) for the impact that high bail is likely to have on the trial judge or jury.[35]

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30 Subin, op. cit., p. 364.

31 Ibid., p. 314.

32 Ibid., p. 303.

33 Ibid., p. 307.

34 "The Administration of Bail," op. cit., p. 297.

35 Freed and Wald, op. cit., p. 49.

Of the five reasons given preceeding for setting high bail, only the first is legally acceptable. In Williamson v. United States (1950) the court decision stated that,

> Imprisonment to protect society from predicted and unconsummated offenses is so unpredictable in this country and so fraught with danger of excesses and injustice that I am loath to resort to it, even as a discretionary judicial technique to supplement conviction of such offenses as those of which the defendants stand convicted.[36]

The third reason given, i.e. to expose the defendant to jail, is frequently used in cases where the accused is a youthful offender with no previous criminal record. The fourth reason, i.e. an emotional response to a particular criminal or crime is often found in cases of internal security, (e.g. the Dennis and Soblen Cases).[37] In such cases, general abhorence of the crime by the public reduces the likelihood of bail. High bail was often set for defendants in civil rights cases. Persons accused of crimes of violence are often subject to high bail. This is done with the intent of keeping the defendant in jail and away from society. However, if the defendant is affluent, he is able to post a high bail and return to society.

Appellate courts generally will not attack as "excessive" a high bail set by a lower court merely because the accused cannot afford to pay it.[38] However, in Stack et al v. Boyle (1951), a United States Court of Appeals did find $50,000 per defendant for the twelve defendants to be excessive bail. The twelve were indicted in California under the

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[36] Cited in Ibid., p. 5.

[37] Ibid., p. 50.

[38] Richard J. Smith, "Bail or Jail: Toward an Alternative," University of Florida Law Review, CVIII (1960), p. 62.

Smith Act. The defendants felt that $50,000 was excessive and violated the protection accorded them by the Eighth Amendment. To establish their case, the defendants submitted financial statements, health records, prior criminal records, and statements concerning family ties. The government, to affirm its $50,000 bail request, submitted a record which showed that four defendants, previously convicted in New York under the Smith Act, had forfeited bail. However, no evidence was produced that the incidents were related. In support of the Court's decision to lower the bail amount, Chief Justice Vinson stated,

> Bail for each petitioner has been fixed in a sum much greater than that usually imposed for offenses with like penalties . . . to infer from the fact of indictment alone a need for bail in an amount greater than that usually fixed for serious charges of crimes is required in the cases of any petitioners, that is a matter to which evidence should be directed in a hearing so that the constitutional rights of each petitioner may be preserved. In the absence of such a showing, we are of the opinion that the fixing of bail before trial in these cases cannot be squared with the statutory and constitutional standards for admission to bail.[39]

The New York State Constitution has a bail provision modeled after the Eighth Amendment to the United States Constitution. It provides that "Excessive bail shall not be required."[40] A New York State judicial decision elaborated that the New York State Constitution "accords no accused any right to bail, but serves only to forbid excessiveness."[41]

Bail in New York State

The New York State Code of Criminal Procedure establishes the

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[39] Fabricant, op. cit., p. 310.

[40] "Bail Procedure and Weekend Arraignment Practice in the City of Buffalo," Buffalo Law Review, VIII (Spring, 1958), p. 431.

[41] Jim Cameron, "The Standards for Determining Excessive Bail," University of Kansas City Law Review, XX (April-June, 1952), pp. 171-174.

framework for the use of bail throughout the state.[42] The present Code was adopted in 1881 and has had many revisions since. However, a new Code of Criminal Procedure has been written and adopted.[43] It will become effective in September, 1971.[44]

The present bail system that functions in New York State is a money oriented system. The system rests upon the accused's ability to provide money bail himself or upon the accused's ability to raise sufficient collateral to satisfy a private bondsman. The private bondsman must be assured that his risk of loss is outweighed by the premium that he receives for furnishing the bail bond.[45]

The new Code of Criminal Procedure is an attempt to systematize the numerous changes that have been made since the original code was adopted. Since its intent was not a modification of the bail system, the new code continues the same monetary bail system. It does this by reversing the order of priorities contained in the Federal Bail Reform Act of 1966. The new New York Code provides that unless the court explicitly authorizes a non-secured form of bail, the accused must provide the collateral that would ordinarily be required for release.[46]

The New York State Legislature has determined the maximum amount of bail that may be required in certain instances. The Legislature has also stated that, if the alleged crime is a misdemeanor, the

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[42] Code of Criminal Procedure, Part 4 (Rochester, New York, 1953).

[43] "Bail Procedure and Weekend Arraignment Practice in the City of Buffalo," op. cit.

[44] Interview with Lieutenant J.M. Frachel, Rochester City Police, March 16, 1971.

[45] Fabricant, op. cit., p. 303.

[46] Ibid.

defendant has a right to bail before conviction.[47] However, within these limits the courts have a great deal of latitude. There are no statutory guidelines set for judges to help them weigh different factors when setting the amount of bail.[48]

The setting of a money bail exerts a hardship on persons with a low income or no income. Although the State Constitution bars excessive bail, the Court of Appeals has stated that just because one is indigent and cannot meet the monetary bail set, the bail is not excessive. One accused indigent raised the equal protection issue when he could not meet the $1,000 bail set for him. In this particular case the defendant was nineteen years old, had lived at the same address for two years, had a steady job, and had no previous criminal record. Although the Court of Appeals refused to consider the equal protection issue, the Court recognized the abuses of the present monetary bail system. Although recognizing the inequity, the Court stated that, "It is our opinion that the adoption of such a system [a non-financially oriented system] is more properly within the province of the legislature."[49]

Bail in New York State can be set in either of two places. It can be set at the station house (or jail) or in court.[50] If bail is set at the station house (or jail) it must be set by the desk officer in charge of the lock-up. He must be of the rank of sergeant or above on the police force.[51] Bail at the jail can be taken from 11:00 a.m.

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47 "Bail Procedure and Weekend Arraignment Practice in the City of Buffalo," op. cit.

48 Ibid., p. 432.

49 Smith, "Bail or Jail: Toward an Alternative," op. cit., p. 65.

50 "Bail Procedure and Weekend Arraignment in the City of Buffalo," op. cit., p. 435.

51 Interview with Lieutenant Frachel, op. cit.

to 8:00 a.m. of the following day.[52]

Bail Practices in Rochester, New York

The New York State Code of Criminal Procedure, as previously stated, sets guidelines for the bail system. These guidelines are adhered to by the police in Rochester.

Thus, if the defendant is accused of an ordinance offense, bail will be set from the $5 minimum to the $100 maximum. If the alleged crime is a misdemeanor, the bail will range from $25 to $200. Police officers may not set bail for certain selected crimes: 1) handling of abortion articles,[53] 2) sex offenses, 3) drug offenses which are classified as misdemeanors, 4) misdemeanor and local gambling offenses, 5) prostitution, 6) obscenity, and 7) welfare charges. Nor are police officers allowed to set bail for felonies.[54]

In determining the exact amount of bail that is to be set within the Legislature's approved range, the police officer uses certain criteria to aid him in making the decision. Criteria used are the accused's past record, whether he is a local person, and whether he is employed. This information is available from the police department's "pedigree sheets."

Should the accused have no previous criminal record, and if the penalty for the charge is only a fine, a police officer may, at his

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52 "Bail Procedure and Weekend Arraignment Practice in the City of Buffalo," op. cit.

53 This crime is probably no longer considered in relation to abortions performed by medical doctors because of the change in the state's abortion law in 1970.

54 All the information concerning bail practices in the Criminal Court of Rochester was obtained through the interview with Lieutenant Frachel, the interview with Mr. John Philiponne, and/or personal observation.

discretion, parole the accused. In public intoxication cases, the police officer usually sets the bail at $10. However, if the accused has been arrested on a public intoxication charge within the last two months, the bail amount is doubled.

Although police officers may set bail (except in the seven instances given earlier--and felony charges), they are not required to do so unless they have positive identification, i.e., a picture of the accused and his fingerprints. However, when the new Code for Criminal Procedure comes into effect in September, 1971, all persons accused of crimes throughout the state must submit to fingerprinting and having their picture taken. In February, 1969, the Executive Department of the State of New York established an information gathering system. This New York State Identification and Intelligence System (NYSIIS) was established to "insure that the individual is charged properly and to assist the judge in determining whether the accused should be released on bail or committed to jail pending further proceedings."[55] The system achieves its aims through a facsimile transmission network that will expedite the forwarding of fingerprint cards to NYSIIS. NYSIIS, in turn, will identify the fingerprints and ascertain the previous criminal record, if any, of the accused.[56]

Since police officers may not set bail in New York State for persons who have allegedly committed felonies, bail in these cases (and in the selected instances listed earlier) must be set by a judge.

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[55] U.S. Congress Senate Committee on the Judiciary--Subcommittee on Constitutional Rights, 91st Congress 1st. Session, "Amendments to the Bail Reform Act of 1966," p. 419.

[56] Ibid. One of the reasons for this information service is the desire to crack-down on organized crime.

The judge may either set bail at the arraignment, or he may set bail at the station house via the telephone.

Frequently, the accused's attorney will call a judge (usually the judge sitting in Part I of the Criminal Court) and request the judge to set bail. Sometimes an attorney will make a bail recommendation to a judge. This recommendation is sometimes accepted. The Legislature has set the minimum bail for felonies at $500; however, it has been observed by this writer that the judges in Rochester do not always adhere to the guidelines. (Evidence of this will be presented in the data analysis section of this paper.) They sometimes use their own discretion, and make the bail lower than the minimum that the Legislature has set.

In instances in which the accused has a record of two previous convictions for any of the seven selected offenses previously mentioned, bail may not be set by a city court judge. It must be set by a county court judge.

In instances where conviction on the present charge would be the fourth felony conviction, bail may not be set. In such cases the accused may be adjudged an habitual criminal. If one is so judged, one may be sentenced to life imprisonment with no chance for parole.

If bail is not set at the station house/jail, it is usually set at the arraignment. At the arraignment the judge has a copy of the arrest report and the criminal court clerk's record, if any, on the accused. Both of these are utilized by the judge to assist him in his decision. Although the judge sets the amount of bail at the arraignment, it is the Assistant District Attorney who is assigned to the

court who suggests the amount of bail. This writer, through observation in the courtroom, concluded that his suggestion is usually accepted by the judge. The Assistant District Attorney, when suggesting a certain amount of bail, takes into account the nature of the charge and the person's record, and the Assistant District Attorney considers what the accused has to fear in terms of sentencing. In situations that involve loss of money or property damage to the complainant, the Assistant District Attorney tries to have bail set at an amount equal to the loss.[57]

The Bondsman

In spite of the low priority given to money bail with the adoption of the Federal Bail Reform Act in 1966, courts continue to rely on money bail. This continued reliance on money bail in Rochester, and throughout the country, has continued the role of the bondsman in our legal system.

Not only did the mobility of the population affect our bail system, making it a financially-oriented system, but it also was the reason for the development of the bondsman. Since people knew little of each other's backgrounds, the courts found it difficult to ascertain the trustworthiness of prospective sureties. Also, many new settlers in an area were without friends or relatives to aid them in obtaining bail.[58] Thus, the bondsman emerged to meet the needs of accused persons whose right to bail would otherwise be denied because of a lack

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[57] Interview with John Philipponne, Assistant District Attorney, Rochester, New York, March 1, 1971.

[58] Smith, "Bail or Jail: Toward an Alternative," op. cit., p. 61.

of a personal surety, real estate, or cash.[59] Today the personal bondsman still prevails in rural areas. However, urban areas are centers of activity for the commercial bondsman.[60]

This advent of the commercial bondsman brought about several changes in the practice of bail. The use of personal sureties faded out of existence and the monetary system took its place. The bondsman's desire for profit caused one writer to state that bondsmen had caused the bail system "to degenerate into a two-way door, opening outward to pre-trial liberty for defendants with funds, and inward to prolonged confinement for defendants without any money to post bond."[61]

The United States is one of only two countries in the world (the other being the Philippines) in which professional bondsmen are allowed.[62] This is perhaps due to the numerous drawbacks of having professional bondsmen. Earlier in our country's history "straw bondsmen" came on the scene. These men provided sureties without sufficient assets to meet their obligations. To combat the straw bondsmen, state legislatures enacted statutes that required bondsmen to show their ability to meet financial obligations that they had assumed.[63]

This regulation led to the bondsmen's insistence that the defendant

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59 Freed and Wald, op. cit., p. 22.

60 Cecilia Lannon, "Bail in the United States: A System in Need of Reform," Hastings Law Journal, XX (November, 1968), p. 385.

61 Smith, "Bail or Jail: Toward an Alternative," op. cit., p. 60.

62 Ibid.

63 "Bail: An Ancient Practice Reexamined," op. cit., p. 498.

(or his friends or relatives) put up collateral security, often for the full amount of the bond. This protected the bondsmen in the event of forfeiture.[64] This protecting of their interest by the bondsmen is termed the "build-up" fund.[65]

Bondsmen were also given the power to arrest persons for whom they have put up bail, should the accused fail to appear in court as required, or should the bondsman suspect that flight is imminent.[66] Bondsmen in New York State do have this power. One writer has expressed the fear that it is unwise for a free society to unleash such an "army of private citizens with such unfettered power."[67] There have been instances when the bondsman's search and arrest of the bailee can be likened to the bounty hunters of the past.

Although the power of arrest is the only legal power that bondsmen have throughout the country, in reality they have other powers. Some of these other powers that the bondsmen have are 1) the power to deny bail (this denying of bail can be completely arbitrary and in no way related to the likelihood of flight), 2) the power to coerce defendants into paying illegal over-charges, 3) the power to have a defendant select an attorney with whom the bondsman has a fee-splitting arrangement, and 4) the power to give preferred treatment to selected persons. This last power is especially prevalent when the accused is a member of a syndicate that has an arrangement with the bondsman.[68]

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64 Hoskins, op. cit., p. 1135.

65 "Bail: An Ancient Practice Reexamined," op. cit., p. 469.

66 Freed and Wald, op. cit.

67 "Bail: An Ancient Practice Reexamined," op. cit., p. 972.

68 Ibid.

Monroe County in New York has only one bondsman. Some of the counties surrounding Monroe have no bondsman. However, in areas of the state, and elsewhere throughout the nation, competition does exist among bondsmen. In these areas, the bondsmen often solicit business. Under New York State law, solicitation is legal and may take place in the courthouse, the police station, or in prisoner-detention areas.[69] One New York State judge had the following view toward solicitation by bondsmen:

> It is even necessary and desirable that this should be so--under proper regulation. Otherwise the casual offender, the inexperienced offender, the offender charged with minor crimes, would be confined in jail while the professional criminal, with his outside contacts, experienced little difficulty in arranging bail. In this Court, even after the cases have been examined below, I have found many defendants ignorant of the fact that bail has been fixed and the method and cost of obtaining release on bail. And it is generally the minor or low bail offender, whose even temporary detention is not justified by the crime charged who finds himself in the predicament. It is most desirable that this class of offender be solicited and bailed.[70]

The cost of a bail bond may differ widely depending on the locale. Some states regulate the premiums that a bondsman may charge. Other states allow whatever the traffic will bear. Still other states control the fees charged by individual bondsmen. In New York State the bondsman's premium rates are regulated. He may charge 5% per year on the first $1000, 4% on the second $1000, and 3% on the remainder of any particular bond.[71] Often the bondsman will add a service charge to the premium rate. This service charge may vary from $10 to $25 again depending on the locale.[72]

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69 Freed and Wald, op. cit.

70 Ibid.

71 Ibid., p. 23.

72 Ibid., p. 24.

Since the defendant and/or his friends and relatives often cannot pay the entire premium at one time, most bondsmen write bonds on credit. The accused may then pay the premium on the installment plan.[73] It is presumed that bondsmen feel that it is more profitable to write bonds on credit than not to take the business at all. However, if a defendant without funds has been bailed out of jail by a bondsman issuing credit, it places pressure on the defendant to secure funds for such payment. Several studies have indicated that some defendants commit further crimes (especially burglary) to pay the bondsman his premium.[74]

When regulations were enacted which required that bondsmen have liabilities equal to the bonds that they were posting, insurance companies entered the field of bonding. The insurance companies recruit private bondsmen to act as sub-agents for them. Insurance companies, too, have a "build-up" fund. Thus, any losses attributed to a particular bondsman are absorbed by the insurance company. New York State has specified that private bailbonding be done only through bondsmen licensed by insurance companies.[75] The Federal Rules for Criminal Procedure state that, "No bond shall be approved unless the surety thereon appears to be qualified."[76] However, few states have established criteria for ascertaining who is a qualified bondsman.

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[73] Ibid., p. 25.

[74] Ibid.

[75] "Bail: An Ancient Practice Reexamined," op. cit., p. 968.

[76] Lawrence W. Kaplan, "Obligation of a Bail," University of Pittsburgh Law Review, XII (Summer, 1952), p. 756.

Bail forfeitures theoretically occur when the accused fails to appear in court at the specified time. However, in practice, bondsmen are often given a grace period to locate the accused and return him to court. Even if the accused is not located within that time, the courts often do not hold the bondsman liable for the full amount of the bond. The Surety Association of America has reported that annual losses from bail forfeitures is less than 2.4% of all bonds underwritten.[77] Forfeitures are sometimes intentional on the part of the defendant, especially in large cities. If the defendant reports to court and finds a judge presiding who has a reputation of being "hard," he will leave. Due to the periodic rotation of judges, a defendant sometimes feels that it is wiser to lose his bail money--although, as stated earlier, the grace period often alleviates this--and come to court at a later date when an "easy" judge is on the bench.[78]

As mentioned, bondsmen do not automatically forfeit the bond, should the defendant fail to appear. However, in New York City when the District Attorney's office tried to tighten the enforcement of bail forfeiture policies, the bondsmen retaliated. They retaliated through the use of bondsmen's strikes. These strikes, in 1961, and again in 1964, were real, or threatened, refusals to write bonds except on one hundred per cent collateral in the form of bank deposits or real estate. This led to the jailing of numerous persons accused of minor crimes with small bonds for which no collateral was usually required. This, in turn, led to further overcrowding of detention facilities.[79]

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[77] Freed and Wald, op. cit., p. 29.

[78] Ibid., p. 28.

[79] Ibid., p. 29.

The Need for Reform

Although there are numerous statutory guarantees of the right to bail, this amount, when fixed, can and does differ widely. Bail is often decided upon according to a schedule.[80] Variance within states (using the same schedule) is common. For a non-violent felony the bail may range from $300 to $5,000.[81] However, the bail system as practiced throughout the United States assumes that the defendant has property. Justice Douglas, in Bradley v. United States (1960) stated that ". . . to demand a substantial bond which the defendant is unable to secure raises considerable problems for the equal administration of the law."[82]

For persons without cash or real estate, the bail system is indeed a sham. Former Attorney General Robert Kennedy stated, "There can be no equal justice when persons are forced to stay in jail before their trials not because they are poor risks, but because they are poor."[83]

Our entire judicial system is based in part on the presumption of innocence. Because of our adherence to the presumption of innocence, our society is reluctant to impose restrictions on a person's freedom prior to conviction. Theoretically, the presumption of innocence should prevail in all instances. Such is not the case. All too frequently, it is the wealthy alone who gain their freedom pending

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[80] Lamont R. Kaiser, "Bail System: Is It Acceptable?," Congressional Record, (May 14, 1964), p. 1009.

[81] Lannon, op. cit., p. 385.

[82] Quoted by Smith, op. cit., p. 64.

[83] Luther House, "Criminal Procedure--Some Problems in the Administration of Bail," Kentucky Law Journal, XLIV (Summer, 1956).

trial.[84] Juries throughout the country are instructed that no inference of guilt can be drawn from pretrial detention, yet the effect of pretrial detention is evident in final case disposition.[85] Not only are the effects of pretrial disposition evident in case disposition, they are also evident in numerous other areas.

The figures compiled on the number of persons in jail because they cannot afford bail are staggering. The condition prevails throughout the country. Studies have shown that in selected cities the following percentage of defendants could not make bail: San Francisco--57%, St. Louis--79%, Miami--71%, Chicago-Cook County--62%, Washington, D.C.--30-40%, and Baltimore--over 70%.[87] In New York City alone in 1962, 58,458 persons could not make bail and were thus detained in jail.[88] In 1960, 23,811 federal prisoners were in jail before sentencing due to lack of bail money.[89]

In some instances detention was due to high bail. In other instances it was due to little or no income. Some cases were a combination of the two factors.

One study found that 77% of the cases in Chicago had bail set at more than $5,000. And, only 25% of the defendants were released on bail. On the other hand, in Philadelphia only 1% of the defendants

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[84] Richard J. Smith, "Bail Before Trial: Reflections of a Scottish Lawyer," University of Pennsylvania Law Review, CVIII (1960), p. 322.

[85] Goldfarb, op. cit., p. 15.

[86] Lannon, op. cit., p. 385.

[87] Patricia M. Wald, "Pretrial Detention and Ultimate Freedom: A Statistical Study," New York University Law Review, XXXIX (June, 1964), p. 634.

[88] Ibid.

[89] Ibid.

had bail set at more than $5,000. And, in Philadelphia 86% of the defendants were released on bail pending trial.[90]

A New York City study found that of 2,292 criminal cases for which bail was set there were distinct levels at which a percentage of defendants could not furnish bail: 28% at $500, 38% at $1,000, 45% at $1,500, 63% at $2,500, 75% at $5,000, and 86% at $7,500.[91] This University of Pennsylvania study of New York City bail indicates that a majority of the defendants cannot make bail at $2,500.[92] The time length before trial is to give both the defendant and the state ample case preparation time.[93] Long trial delays are particularly hard on those who cannot afford bail. One 1971 study in New York City indicated that over 2,500 persons were held in detention halls over three months while awaiting disposition of their cases.[94] Some defendants have indicated that the long wait ahd the overcrowded detention facilities have influenced them to change their pleas. Thus, they plead guilty and waive their right to trial so that they may be sentenced and escape the detention areas.[95]

The particular cases of individuals who cannot afford bail point out the gross injustices of the money-oriented bail system. In one case, the defendant was accused of taking $14.05 from a subway change booth. Unable to pay the bondsman's fee of $105 on his $2,500 bond, he was jailed for six months while awaiting trial. He was acquitted,

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[90] Kaiser, op. cit., pp. 1009-1010.

[91] Lannon, op. cit., p. 384.

[92] New York Times, May 17, 1962, p. 26.

[93] Smith, "Bail or Jail: Toward an Alternative," op. cit., p. 59.

[94] New York Times, January 30, 1971, p. 56.

[95] Lannon, op. cit., p. 305.

but he had spent six months in jail with a homosexual, a drug addict, and a veteran criminal. He also lost his job and his apartment.[96] Another case is that of a man who was jailed fifty-four days for driving without a license, because he could not raise $300 bail. Ironically, the maximum penalty for the offense was five days in jail.[97]

The effects of pretrial detention are probably as numerous as the individual cases. However, broad problem areas can be discerned. The individual who cannot make bail is hampered in preparing his case. If he is in jail he cannot locate witnesses to help him with his defense. Consultations of the accused with his attorney are sometimes limited, because they must conform to the detention center's rules and regulations.[98] Detention centers are made for temporary retention of prisoners. They are not equipped with educational and recreational facilities. Thus, it can be presumed that the emotional and psychological stress on the defendant will be increased because of boredom.[99] For, "When a poor man is arrested, he goes willy-nilly to the same institution, eats the same food, and suffers the same hardships as he who has been convicted."[100]

Families, too, experience a loss if a member is detained pending trial. Usually, it is the breadwinner that is in prison. Without any income, families are often forced on relief. Children suffer from the absence of a parent in the home.

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[96] Ibid.

[97] Fabricant, op. cit., p. 305.

[98] New York Times, October 23, 1963, p. 30.

[99] Freed and Wald, op. cit., p. 43.

[100] New York Times, October 23, 1963, p. 30.

The cost to communities of pretrial detention is great. New York City spent over thirteen million dollars to provide for the detention of 58,458 persons for 1, 775,778 days[101] at $6.25 per day per person.[102] St. Louis, with its detention rate of 79% pays $2.56 per person per day for an average of six weeks.[103] Also, if one is in jail, one cannot secure funds to employ defense counsel. Thus, the community must assume that cost.

Pretrial detention not only affects the defendant, his family and the community while he is being detained, it also affects the case disposition. The sentencing judge, when forced to decide between probation and a jail sentence, weighs different factors. He weighs the defendant's employment status, community stability and family ties. A defendant who has been detained in jail rates poorly, using those criteria. Thus, he is more likely to receive a jail sentence.

Although first offenders usually receive lighter sentences than defendants with previous criminal records, this does not hold true if the first offender was detained in jail prior to sentencing.[104] Probation is often granted to the first offender on the assumption that he is more likely to be rehabilitated if he does not have a prison experience. However, defendants confined to detention areas prior to trial have already been exposed to the unfavorable elements from which one is protected by a probation sentence.[105] A study of approximately

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101 Lamont, op. cit., pp. 1010-1011.

102 Ibid.

103 Fabricant, op. cit., p. 306.

104 Wald, op. cit., p. 635.

105 Freed and Wald, op. cit., p. 46.

750 defendants arraigned in the Manhattan Magistrate's Court (October 16, 1961--September 1, 1962) indicated that 64% of the 358 defendants who are in jail continuously prior to case disposition were sentenced to prison. However, only 17% of the 374 who were able to make bail received prison sentences.[106]

One recent study in New York City found a strong relationship between pretrial detention and final disposition. Persons unable to make bail received jail sentences 64% of the time, while those able to make bail only received jail sentences 17% of the time.[107] The same study indicated a strong association between the number of days spent in jail and the case disposition. The greater the length of time that the accused was free prior to trial, the greater the likelihood that he would not receive a prison sentence.[108] It was found that the relationship between pretrial freedom and non-prison sentence existed when previous criminal record was held constant,[109] when the amount of bail was held constant;[110] and when the type of defense counsel was held constant.[111] Since all relationships indicated the strong effect the defendant's at-large status has on the case disposition, continuous efforts should be made to obtain the release of persons from jail prior to trial.[112]

The inability to post bail has numerous effects as shown above. The coin is not one-sided. The ability to make bail also has undesirable effects in some instances.

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106 Fabricant, op. cit.

107 Wald, op. cit., p. 642.

108 Ibid., p. 643.

109 Ibid., p. 647.

110 Ibid., p. 649.

111 Ibid., p. 651.

112 Ibid., p. 635.

Since it is not a function of bail to prevent crimes, accused persons sometimes commit further crimes while out on bail.[113] For example, in August, 1967, William A. Johnson stopped at the drive-up window of a bank on Long Island and demanded money. The teller refused to give him money, and he fired into the window. He was arrested soon afterward by the Federal Bureau of Investigation and charged with attempted robbery. Bail was set at $10,000. Johnson posted bail and went free until his February, 1968 trial. He showed for trial one day late, for on the trial date he was robbing another bank.[114] The Nixon Administration, supported by Attorney General Mitchell, has proposed that pretrial detention be used for recidivists.[115] This proposal has been adopted as a part of the Washington, D.C. Crime Control Bill. However, much opposition to this plan was voiced by those who feel that pretrial detention may "develop a life of its own."[116] Opponents contend that one cannot be denied his freedom without a trial on the basis of a prediction of what he will do.[117]

Bail jumping is another undesirable effect of setting bail. Bail jumping frequently occurs when the defendant has a great deal to fear in terms of sentencing. This holds especially in felony cases and cases of internal security.[118]

Bail may be denied in certain cases to protect the public safety.

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[113] Sandholm, op. cit., p. 393.

[114] Subin, op. cit., p. 363.

[115] John N. Mitchell, "Bail Reform and the Constitutionality of Pretrial Detention," Virginia Law Review, LV (November, 1969).

[116] Abraham S. Goldstein, "Jail Before Trial," New Republic, CLX (March 8, 1969), p. 17.

[117] Subin, op. cit., p. 363.

[118] Kaplan, op. cit., p. 756.

This is true in the case of persons accused of violating certain drug statutes, and in the case of alleged sexual psychopaths.[119]

Although the substance of this paper is concerned with bail prior to trial, there are other instances where the bail system is applicable. The bail system covers bail during trial, bail for witnesses, and bail pending appeal. Concerning bail pending trial, it has been held that a defendant accused of a noncapital felony is not entitled as a matter of right to bail during trial. There are two conflicting theories concerning bail pending appeal from a capital conviction. One theory contends that the accused has no absolute right to bail, despite a recommendation of mercy and reduction of the death penalty to life imprisonment. An opposing viewpoint is expressed by those who believe that, despite a conviction, a recommendation of mercy that results in life imprisonment (or a lesser sentence) entitles one to bail as a matter of right.[121] Thus, the defendant may be held in custody for the duration of his trial.

The Federal Rules for Criminal Procedure state, "Bail may be allowed pending appeal or certiorari only if it appears that the case involves a substantial question which should be determined by the appellate court."[122] In cases in which the defendant is ill, and it is thought that confinement will probably cause death, bail pending appeal is usually granted.

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[119] K. Carnahan, "Sexual Psychopaths--Should Sexual Psychopaths Be Subject to Bail?," Chicago-Kent Law Review, XXX (March, 1952), p. 161.

[120] Sandholm, op. cit., p. 395.

[121] William Bennett, Jr., "Criminal Law--Right to Bail Pending Appeal From Conviction of Capital Offense," University of Florida Law Review, V. (Fall, 1952), p. 333.

[122] Ibid., p. 398.

Attempts at Reform

Because of the numerous programs associated with the present bail system, there have been attempts to initiate changes in the system at all levels of government.

Most notable of the reform attempts has been the release on recognizance (ROR) program. One such program was initiated in New York City under the Vera Institute in the early 1960's.[123] Since then, ROR programs have been started in other areas of the country. The Junior League of Rochester instituted a ROR program in 1969-70. This program was modeled after the Vera Institute's program, and after the Des Moines, Iowa ROR program. In September, the responsibility of the operation of the Rochester ROR program was turned over to the city.[124] The present Rochester ROR program has been funded for three years.[125]

The Manhattan Bail Project, as established by the Vera Institute started in August, 1961, and ended three years later. During the initial trial period, 3,505 persons were released on recognizance, after having been ascertained to be "good risks" according to set criteria. The criteria:

1) residence (six months or more at the same address)
2) current employment
3) family ties in the area
4) the extent and type of previous criminal record
5) references

Of the 3,505 defendants on ROR, 98.4% returned to court when required. This was a greater percentage returning than of those released on

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123 Robert Wendell Conder, "Bail After Conviction," Michigan Law Review, XXV (April, 1927), p. 647.

124 Telephone interview with Mrs. Patricia Thompson, Head of Rochester Release on Recognizance Program, January 13, 1971.

125 Mrs. J. DeMaille, Head of Junior League Release on Recognizance Program, Speaker at 11th. Annual Legislative Institute of Church Women United, February 5, 1971.

money bail.[126] The Manhattan ROR program was so successful that its operation has since been taken over by the City of New York.

When Ramsey Clark was the Deputy Attorney General, he stated, "All studies we have seen show that large numbers of defendants whom the bail system holds [sic] can safely be released with little risk of flight. . ."[127] This has been shown to hold true in ROR programs throughout the country. Suffolk County in Massachusetts releases on their own recognizance over 60% of all persons accused of crimes. Their default rate is only 1%.[128]

The Second Circuit Court of Appeals has a new rule that says the United States government must be ready for trial within ninety days (vs. six months) if the defendant is not out on bail.[129] Should the government not be ready to present its case by the end of the ninety day period, the defendant must be released from jail on his own recognizance.

Another attempt at reform has been instituted by Illinois. In an effort to eliminate bondsmen and insurance companies from the bail bond field, the state has assumed the function of bonding. In Illinois (since 1963) the accused can obtain release by executing a bond in the amount of the bail set by depositing 10% of the amount with the court clerk. If the accused complies with all conditions of the bond,

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[126] Smith, "Bail or Jail: Toward an Alternative," op. cit., p. 65.

[127] Ibid.

[128] Ibid., p. 67.

[129] Mrs. E. Logan-Baldwin, President Rochester American Civil Liberties Union, Speaker at 11th. Annual Legislative Institute of Church Women United, February 5, 1971.

90% of his cash deposit is returned.[130] For example, if bail is set at $1,000, the accused may deposit $100 with the clerk of the court. Should he meet his bonding obligations, $90 is returned, and his total fee is only $10.

Although both the Vera Institute's ROR plan and the Illinois Plan make great inroads on the injustices of the bail system, they do not solve all of the problems. The ROR plan does not help the unemployed, the newcomer to an area, or the person without family ties. The Illinois Plan does not help the indigent who cannot post the 10% of his bond.

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[130] Smith, "Bail or Jail: Toward an Alternative," op. cit., p. 66.

Chapter II

## Design and Method

The research centers on a sample of the defendants arraigned in the Rochester, New York Criminal Court in 1970. Special attention is given to the defendant-related characteristics of the bail situation in order to determine their effect on the bail decision. Rochester, as was indicated before, was selected because it is an urban center with a diverse racial population, a high crime rate, and a wide range of criminal activity.

As shown in the first chapter, the literature on bail is extensive. Some of the previous research has been directed toward the relative merits and/or faults of former and present bail systems. Much research has centered on the shortcomings of a monetary bail system. Numerous researchers have found that the widely-practiced monetary bail system affects most unjustly the poor. Many writers interested in reforming the bail system have discussed factors that they feel influence the bail decision. These writers, in turn, offered alternative factors that should be considered when a bail decision is made. Alternatives to a monetary bail system have been proposed.

Although various researchers have suggested factors which they think influence the bail decision, no empirical study has been conducted to indicate which defendant-related factors (if any) actually do influence the basic bail decision. Several studies have already noted the influence that judges have on the bail decision. Thus, this study will not deal with the different court-related factors that influence the bail decision. Persons wishing to alter the present bail

system should be aware of the factors that cause the inequalities in the present system.

Certain of these defendant-related characteristics may be termed "legitimate." These are the legally accepted bail decision factors for each accused person. They include the defendant's previous criminal record, the severity of the charge, family ties, and to a small extent, community ties.

The "previous record" characteristic has three sub-categories: the existence of a criminal record, the extent of the record, and the type of record. The "existence of a criminal record" is considered on the basis of "yes, the defendant has a criminal record, i.e., convictions and/or bail forfeitures, in Rochester, New York" or "no, the defendant has no record in Rochester, New York." The number of convictions and/or bail forfeitures is considered under the "extent of record" sub-category. There are three possibilities for further categorizing the record, should the accused have one. These possibilities, as noted in the "type of criminal record," are: 1) the record is completely the same as the present charge, 2) the record is completely different from the present charge, and 3) the record contains convictions and/or bail forfeitures for charges both similar to and different from the present charge.

This study categorizes the charge as to whether it is an ordinance violation, a misdemeanor, or a felony. Whether the alleged crime is a multiple offense, i.e. accused charged with more than one crime from the same incident, is also considered for its relationship with the bail decision.

Family ties are viewed through the defendant's marital status and

the number of children of the defendant.

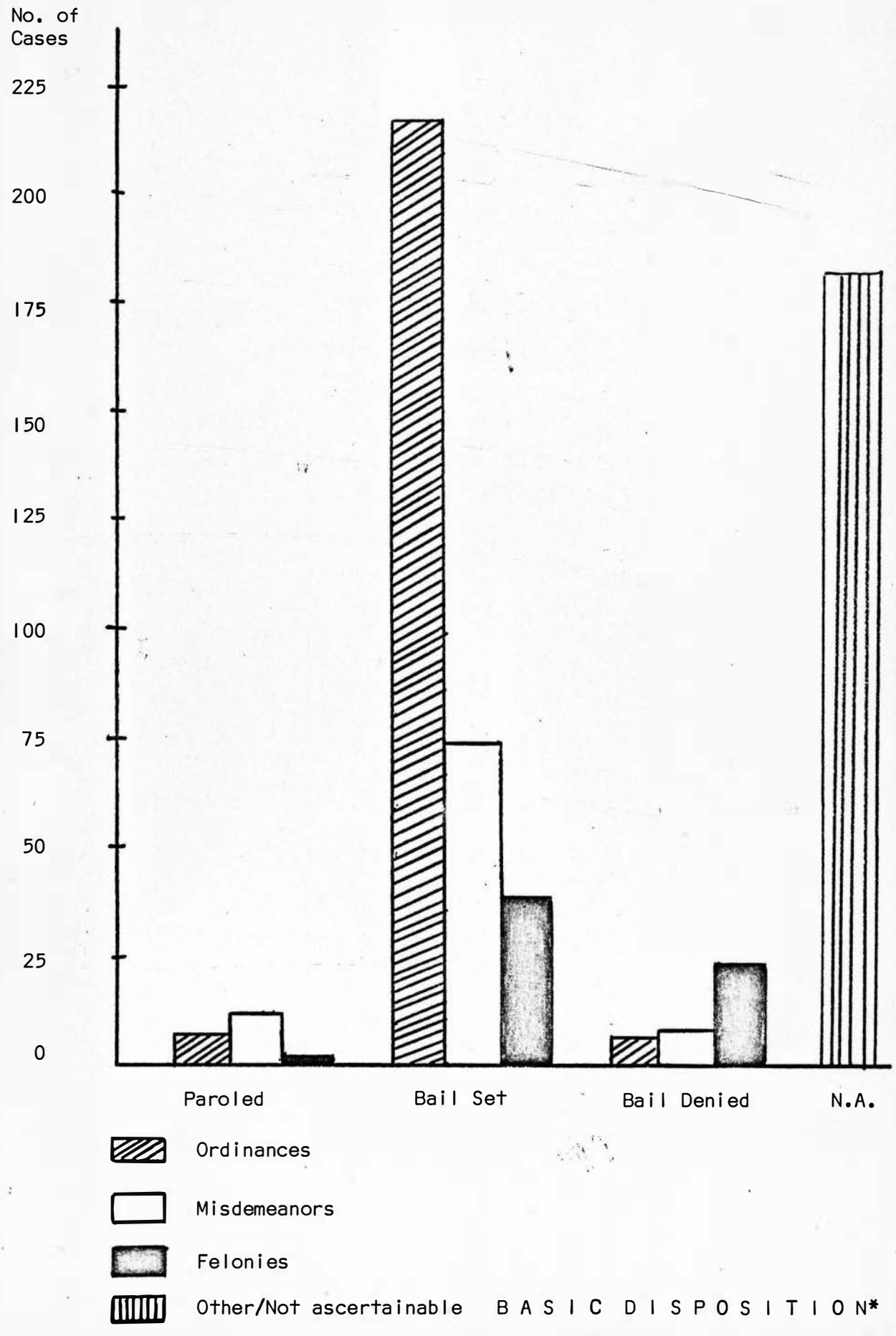
The residence of the accused is a factor considered as an indicator of "community ties." Although length of residence at the present address would be a better indicator of community stability, this information could not be determined from the City Court Records. Due to time limitations, other sources were not used to determine length of residence at present address. Employment, another good indicator of local affiliation, could not be determined from the clerk's records. The fact that a defendant does (or does not) have an alias may be an indicator of his relationship to the community. If one has an alias, it is probable that one would use that alias (or assume another alias) to avoid prosecution.

The defendant's plea to the charge is a quasi-legitimate factor in determining the amount of bail. A plea of "guilty" may be considered sufficient reason for setting high bail or denying bail, under the assumption that the accused is likely to flee.

This study also considered several irrational factors that may influence the bail decision. These non-legal factors considered are race, age, and sex. Theoretically, these factors are not legitimate and should not be considered when the bail decision is made.

"Race" is broken into two categories for classification in the final analysis: "minority" (blacks and Puerto Ricans) and "white."

The bail decision has two parts to it. One part considers the basic bail disposition, i.e., whether the defendant is paroled (released on his own recognizance), whether bail is set, or whether bail is denied. (See Figure 2.1) If bail is set for defendants arraigned in




*time of arraignment or before

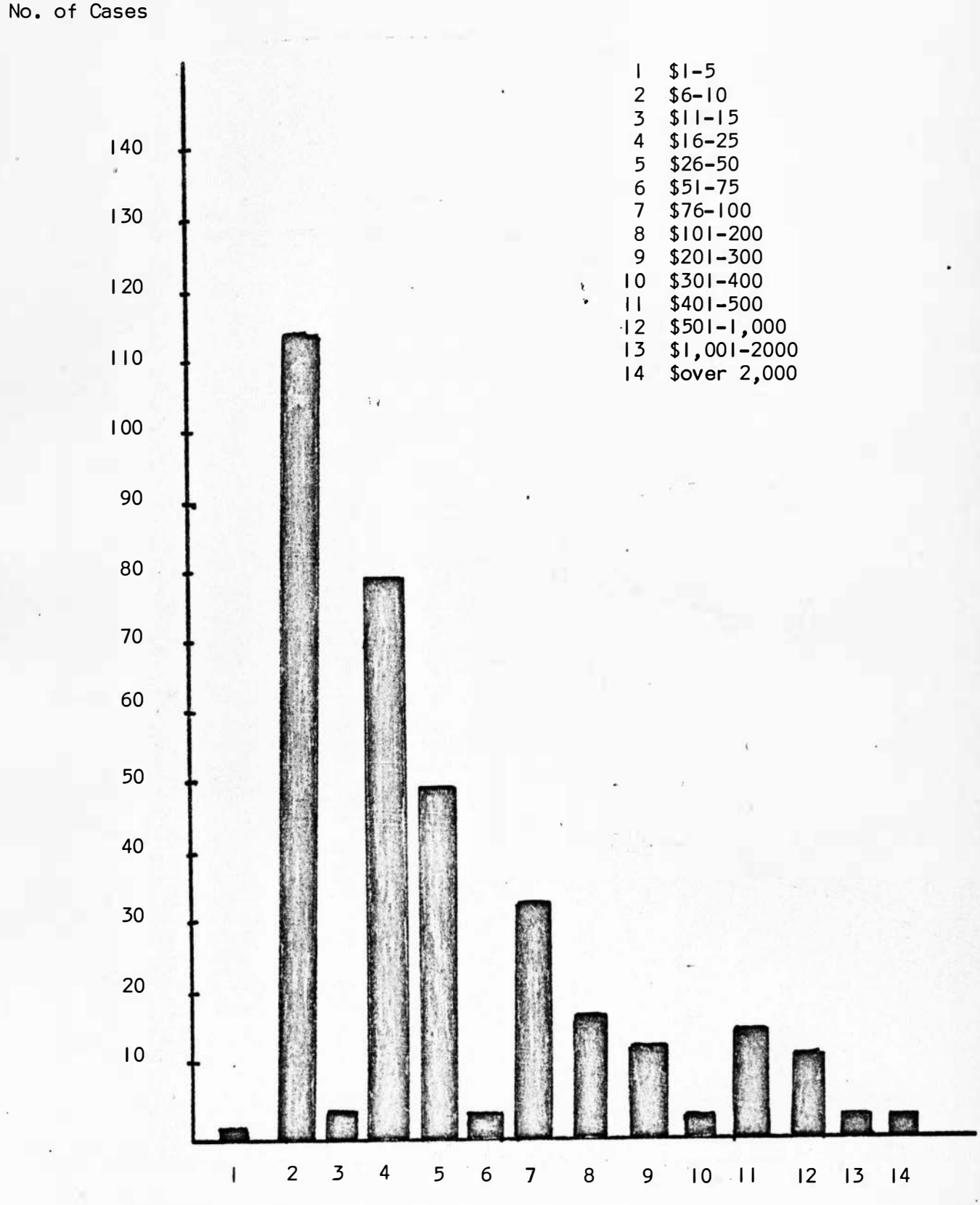
Figure 2.1

the Criminal Court, in most cases in the sample, the bail set was a monetary sum. (See Table 2.2.) In the sample, there were several cases in which accused persons were released on their own recognizance. In all instances, the basic bail disposition as used in this research is determined only at the time of arraignment or before. If bail was set, or if a previously set bail amount was changed after the arraignment, this factor could not be considered due to lack of information.

This paper examines both legitimate and non-legitimate factors as they may influence the bail decision. Non-legitimate factors (defined as the irrational variables) will be analyzed for their effects, along with the legitimate factors which have been cited. Since freedom prior to trial does affect the case disposition, it is important to be aware of the criteria that influence the bail decision.

The existing bail system in New York State centers around the Legislature-set framework for arriving at the bail decision. This framework is based entirely upon the nature of the alleged crime. There are no formalized judge-determined criteria in New York State for making the bail decision, or for setting the amount of bail. Thus, the amount of bail set, although it is usually within the Legislature-set range, can vary widely throughout the State.

As previously stated, police officers in Rochester indicate that they consider the accused's previous criminal record, his residency, and his employment when setting the amount of bail. The Assistant District Attorney bases his bail suggestion (to the judge) mainly on the possible disposition of the case. Given these flexible criteria for determining the amount of bail set, this paper tests whether legally acceptable as well as unrecognized factors will influence the




CASE DISTRIBUTION--AMOUNT OF BAIL SET

Figure 2.2

amount of bail that is set for a particular defendant.

Information was obtained from the court clerk that showed the total number of individual charges that were arraigned in the Criminal Court in 1970.[1] A stratified sample size of 500 based on crimes charged for each month, was randomly selected. Stratification by month of charge was selected to randomize the effects of certain types of crimes which are seasonally related (e.g. shoplifting in December and loitering in Monroe County parks after closing during the summer months).

Numerous sources were used to provide relevant information. Daily court docket sheets provided the month of arraignment, the particular charge, the name of the defendant, the age and address of the defendant, the type of charge(s), the judge at the arraignment, and in some instances, the disposition of the case.[2] Individual records were then obtained from the clerk's files to ascertain other information necessary to complete the data. This included the race, sex, nationality, marital status, and the number of children for each case in the sample. The records also showed the extent and type of previous criminal record. The plea on the present charge could also be determined. Individual records also indicated the disposition of the case, and the judge presiding at the disposition. If the defendant had an alias, this too, was recorded. Since all necessary data was not available from either the daily court docket sheets or from the records of the individual defendants, other sources were used as well. These other sources

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[1] The records of individuals that have been arraigned in the Criminal Court of Rochester are in a very poor state. Some records are missing. Others are incomplete.

[2] Many records were incomplete.

included the court stenographer's daily docket sheets, the turnkey's lock-up sheets, the matron's lock-up sheets, and the clerk's ledger of bail receipts. The stenographer's daily court docket sheets provided the amount of bail set in court. The turnkey's sheets (for male prisoners) and the matron's sheets (for female prisoners) provided information on the amount of bail set, if bail had been set prior to court. Bail set prior to court could have been set by the police officer in charge of the lock-up, or it could have been set by a judge through use of a telephone. For defendants able to make bail, the turnkey's or the matron's sheets clearly indicated the amount of bail. The small number of cases in which the accused was paroled were also discernable. There were numerous instances in which no indication was given concerning bail. Presumably these were instances in which the accused expressed no desire to be free on bail. This might be the case when the defendant was homeless and/or without sufficient funds to meet the amount of bail that would be set. The police-kept records did not indicate bail for cases in which the police officer lacked the authority for setting bail. The clerk's ledger for bail receipts records all bail money posted by individuals with the court. A study of the ledger proved to be a very ineffective method of obtaining information on the bail decision. Several different factors made it difficult to use the ledger as a source of information. The ledger indicates all bail money held with the court. Due to the number of persons posting bail for traffic violations, it is difficult to discern which amounts and which individuals were part of the selected sample. Another difficulty arose because many defendants are unable to make bail until some time after bail was set. The most satisfactory method for obtaining the amount of bail set was from the turnkey's/matron's

sheets or from the court stenographer's docket. However, these sources did not indicate bail for all persons. Nor did these sources indicate any conferences concerning the amount of bail that was set prior to the arraignment or at the arraignment.

Due to a large number of missing and incomplete records, the sample size was increased to 599. The additional cases were selected in the same manner as the first 500.

We now consider empirical evidence on the relationship between the legally accepted defendant-related variables and the bail decision. Following this, we examine non-legitimate defendant-related variables as they are found to influence the bail decision.

Chapter 3

# The Effects of Defendant-Related Characteristics on the Bail Decision

As indicated in the first chapter, the rules and procedures relating to bail provide for consideration of certain defendant-related characteristics in setting or denying bail. Under the sub-category of "legitimate" characteristics, these would include type of crime(s) allegedly committed, previous criminal record, family ties, community ties, and plea to the charge. "Non-legitimate" characteristics include the race, sex, and age of the defendant.

The monetary bail system is widely practiced throughout New York State. The system centers on the Legislature-set guidelines for setting the amount of bail. These guidelines use the type of criminal charges as the basis for amount of bail set. Since police officers state that they use the established guidelines for making the bail decision and since the Assistant District Attornies state they view the possible sentence (which directly relates to the type of crime committed) when suggesting bail, one might suppose that the type of crime charged will be of greatest influence in the bail decision. We now test for possible associations between this and other legitimate characteristics on both the basic bail decision and amount of bail granted.

## I. Legitimate Characteristics

Table 3.1 summarizes all legitimate characteristic relationships examined. We have taken the bail decision and amount of bail as our dependent variables in this examination. The following categories were used in defining our independent variables:

Type of Crime (Ordinance, Misdemeanor, Felony)
Type of Criminal Record (Same, Different, Both [Same and Different]
Multiple Offense (Yes, No)
Previous Criminal Record (Yes, No)

Marital Status (Single, Married, Divorced, Separated, Other)
Number of Children (None, One or More)
Residence (Monroe County, No Address)
Alias (Yes, No)
Plea (Guilty, Not Guilty, Guilty to Lesser Charge)

As can be seen in Table 3.1, the bulk of legitimately considered defendant-related characteristics have no statistically significant relationship to our dependent variables. For the basic bail decision, only four were found to be significant at the .05 level and for amount of bail granted, only six were found to be so significant. As might be expected three of them (Type of Crime, Type of Criminal Record, and Plea) were the same, although the strengths of the relationships varied. In tables 3.2--3.10, we consider these statistically significant relationships separately.

Reconsidering our data, we find that four independent variables were significantly related to the basic bail decision. Although found to be significantly related, there was some variation in the strength of that relationship. In descending order, they are:

| | Variable | Gamma |
|---|---|---|
| (1) | Type of crime | .462 |
| (2) | Plea (recoded) | .300 |
| (3) | Plea | .263 |
| (4) | Type of Criminal Record | .027 |

Similarly, insofar as the amount of bail set is concerned, we find a variation.

| | Variable | Gamma |
|---|---|---|
| (1) | Residence | .793 |
| (2) | Type of Crime | .792 |
| (3) | Plea | .759 |
| (4) | Multiple Offense | .752 |
| (5) | Alias Used | .678 |
| (6) | Type of Criminal Record | .418 |

Table 3.1

Legitimate Characteristics

| Dependent Variable | Independent Variable | Gamma | $x^2$ | p |
|---|---|---|---|---|
| Basic Bail Disposition | Type of Crime | .462 | 85.573 | <.001 |
| " | Multiple Offense | .357 | 5.582 | >.05 |
| " | Previous Crim. Record | .291 | 5.986 | >.05 |
| " | Extent of Prev. Record | .144 | 9.680 | >.05 |
| " | Type of Criminal Record | .027 | 12.371 | <.02 |
| " | Marital Status | .092 | 2.502 | >.95 |
| " | Number of Children | .221 | 0.646 | >.70 |
| " | Residence | .291 | 4.968 | >.05 |
| " | Alias Used | .165 | 1.692 | <.10 |
| " | Plea | .263 | 16.917 | <.01 |
| " | Plea (recoded) | .300 | 15.429 | <.001 |
| Amount of Bail Set | Type of Crime | .792 | 120.520 | <.001 |
| " | Multiple Offense | .752 | 56.790 | <.001 |
| " | Previous Crim. Record | .263 | 5.512 | >05 |
| " | Extent of Prev. Record | .281 | 11.384 | >.05 |
| " | Type of Criminal Record | .418 | 28.349 | <.001 |
| " | Marital Status | .029 | 6.026 | >.05 |
| " | Number of Children | .189 | 5.859 | >.05 |
| " | Residence | .793 | 14.573 | <.001 |
| " | Alias Used | .678 | 8.649 | <.01 |
| " | Plea | .759 | 29.382 | <.001 |

Viewing each characteristic separately, we are able to discern different relationships and tendencies.

Type of Crime

Table 3.2 shows the relationship between the type of charge and the basic bail decision. The "type of crime" allegedly committed is the strongest legitimate defendant-related characteristic that influences the bail decision. It is evident that as the seriousness of the crime increases, the likelihood of bail denial increases. In the sample, less than 2% of the defendants were denied bail when the charge against them was violation of an ordinance. Persons charged with a felony, however, were denied bail over 35% of the time.

Table 3.2

Type of Crime--Basic Bail Disposition

| Basic Bail Disposition | Type of Crime: Ordinance (N=222) | Misdemeanor (N=91) | Felony (N=62) |
|---|---|---|---|
| Release on Recognizance (19) | 3.1% | 12.0% | 1.6% |
| Bail Set (325) | 95.1% | 82.6% | 63.0% |
| Bail Denied (31) | 1.8% | 5.4% | 35.4% |
| $x^2 = 85.573$ | $p < .001$ | G = .462 | |

It is interesting to note that over 98% of the ordinance violators had a monetary bail set for them or were paroled. Of the total number of persons charged with misdemeanors, 12% were paroled.

The type of crime allegedly committed is an excellent predictor of the amount of bail set. (See Table 3.3.) Low money bail, i.e., less than $50, was set for 90% of the persons charged with misdemeanors,

while only 32% of those charged with felonies had a low money bail set for them. Since the Legislature's guidelines establish a $500 minimum for felony charges, it appears as if the official setting bail tends to ignore the guidelines. High bail, i.e., over $400, was set in less than 1% of the ordinance violation cases. Yet, almost 40% of the felony cases had a high bail amount set.

Table 3.3

Type of Crime--Amount of Bail Set

| Amount of Bail Set | Type of Crime: Ordinance (N=211) | Misdemeanor (N=72) | Felony (N=38) |
|---|---|---|---|
| $1--50 (238) | 90.1% | 48.7% | 31.6% |
| $50--400 (60) | 9.0% | 41.6% | 28.9% |
| over $400 (23) | 0.9% | 9.7% | 39.5% |
| | 100.0% | 100.0% | 100.0% |

$x^2 = 120.520$ $p < .001$ $G = .792$

Multiple Offense

The data on whether or not the accused is charged with a multiple offense was not significant. It does appear, however, that, if one is charged with more than one offense, the likelihood of bail denial increases.

Table 3.4 shows that knowing whether or not the offense was a multiple offense is a strong predictor of the amount of bail set. Persons charged with only one crime were granted low monetary (less than $50) bail nearly 80% of the time. Persons charged with more than one crime were granted low bail less than 30% of the time. High bail (over

$400) was set for almost 30% of the multiple offense cases and less than 6% of the time in single-crime cases.

Table 3.4

Multiple Offense--Amount of Bail Set

| Amount of Bail Set | Multiple Offense: Yes (N=51) | Multiple Offense: No (N=295) |
|---|---|---|
| $1--50 (247) | 29.4% | 78.7% |
| $51--400 (68) | 41.2% | 15.9% |
| Over $400 (31) | 29.4% | 5.4% |
| | 100.0% | 100.0% |

$x^2 = 56.790$ $p < .001$ $G = .752$

Previous Criminal Record

The fact that a defendant does (or does not) have a previous criminal record seems to have a slight influence on the bail decision. The cases in this sample, however, were not significant at the .05 level. It appears that persons with criminal records were granted lower bail or were denied bail less frequently than were persons without previous criminal records. This result is contrary to what one would expect to occur. Perhaps officials setting bail view persons with previous criminal records, who have consistently appeared for trial, as being more reliable than persons without previous records who have not been faced with the decision to appear (or not to appear) for trial.

Extent of Criminal Record

The extent of the accused's previous criminal record is a poor predictor of the bail decision. The data was not significant at the .05

level. Only one inference may be made from the data, i.e., as the extent of the record increases, the likelihood of low bail (under $50) decreases.

Type of Criminal Record

The type of criminal record seems to have a low relationship on the basic bail disposition. (See Table 3.5) The type of criminal record has a moderate influence on the amount of bail set. (See Table 3.6) Persons with previous criminal records completely like the present charge are most likely to be released on a low bail. This occurred in the sample in 95.6% of the cases. Persons with a portion of their record similar to the present have low bail set 72.9% of the time. Persons with no charge similiar to the present charge are least likely to have a low bail set (58.2%). High bail follows the same pattern, i.e., only 4.4% of those having completely similiar records have high bail set, while 10.1% of those having completely different records from the present charge have a high bail set.

Table 3.5

Type of Criminal Record--Basic Bail Disposition

| | Type of Criminal Record | | |
|---|---|---|---|
| | Same | Different | Both |
| | (From Present Charge) | | |
| Basic Bail Disposition | (N=67) | (N=88) | (N=50) |
| Release on Recognizance (1) | 0.0% | 7.9% | 4.0% |
| Bail Set (182) | 98.6% | 80.8% | 90.0% |
| Bail Denied (14) | 1.4% | 11.3% | 6.0% |
| | 100.0% | 100.0% | 100.0% |

$x^2 = 12.371$ $p < .02$ $G = .027$

Table 3.6

Type of Criminal Record--Amount of Bail Set

| Amount of Bail Set | Type of Criminal Record: Same (N=67) | Different (N-76) | Both (N=46) |
|---|---|---|---|
| $1--50 (136) | 95.6% | 58.2% | 72.9% |
| $51--400 (31) | 0.0% | 31.8% | 20.4% |
| over $400 (13) | 4.4% | 10.1% | 6.8% |
| | 100.0% | 100.0% | 100.0% |

$x^2 = 28.349$ $p < .001$ $G = .418$

Marital Status

It would be presumed that accused persons that are married would have stronger family and community ties than single persons. Most release on recognizance programs weigh family ties heavily when suggesting the release of an accused person without his being required to post money bail. However, little weight is given to this variable by bail officials in Rochester. The clerk's records often don't even record the marital status. The marital status of only 122 of 599 defendants in the sample was discernible.

The data indicated that marital status has no effect on the bail decision.

Number of Children

When coding data on individual defendants, it was assumed that single defendants had no children. Due to the incompleteness of records, it was possible to ascertain only a small number of defendants that were parents. Since the data is not significant, no conclusions may be drawn.

Residence

The residency of the accused has traditionally been of concern when the bail decision is made. Thus, it is considered a legally acceptable characteristic. Persons that live in the area in which they were arraigned are presumed to have community ties. If one has community ties, it is assumed that the likelihood of appearance in court on the trial date would be greater than the likelihood of appearance for those living elsewhere.

When compiling the data the researcher noted the large number of cases in which a homeless defendant was charged with public intoxication (an ordinance violation). This fact seems to explain the discrepancy between the presumed correlation and the actual results concerning the bail decision residency. As shown in Table 3.7, persons residing in Monroe County consistently had higher bail set for them than did persons with no address. The sample contained too few cases of defendants with addresses outside Monroe County to note any relationship between a local address and an address outside Monroe County.

Table 3.7

Residence--Amount of Bail Set

| Amount of Bail Set | Residence | |
|---|---|---|
| | Monroe County (N=293) | No Address (N=44) |
| $1--50 (240) | 67.7% | 95.6% |
| $51--400 (68) | 22.8% | 2.2% |
| over $400 (39) | 9.5% | 2.2% |
| | 100.0% | 100.0% |
| $x^2 = 14.573$ | $p < .001$ | $G = .793$ |

Alias

As mentioned previously, it was presumed that defendants with an alias would be deemed less reliable when the bail decision is made. Again, during data collection it was noted that many of the persons that had an alias were those persons who were frequently arraigned on a public intoxication charge.

The effect of the defendant having an alias on the amount of bail set is shown in Table 3.8. The figures are quite weighted to show that if one has an alias, bail is much lower than if one does not have an alias. However, it must be remembered that it was frequently the defendant charged with an ordinance offense (public intoxication) that had an alias.

Table 3.8

Alias--Amount of Bail Set

| Amount of Bail Set | Alias: Yes (N=35) | Alias: No (N=232) |
|---|---|---|
| $1--50 (189) | 91.5% | 67.7% |
| $51--400 (58) | 8.5% | 23.7% |
| over $400 (20) | 0.0% | 8.6% |
| | 100.0% | 100.0% |
| $x^2 = 8.649$ | $p < .01$ | G = .678 |

Plea

The defendant's plea to the charge is a quasi-legitimate characteristic. However, since a plea of "guilty" is an admission of guilt, the topic will be treated with the legally-acceptable defendant related

characteristics. The defendant's plea has a great deal of effect on the bail decision. (See Tables 3.9, 3.10, 3.11.) As shown in Table 3.9, all persons that pleaded "guilty to a lesser charge" had bail set.

Table 3.9

Plea--Basic Bail Disposition

| Basic Bail Disposition | Plea: Guilty (N=82) | Not Guilty (N=131) | Guilty to Lesser Charge (N=6) |
|---|---|---|---|
| Released on Recognizance (13) | 2.4% | 8.4% | 0.0% |
| Bail Set (185) | 96.4% | 76.3% | 100.0% |
| Bail Denied (21) | 1.2% | 15.2% | 0.0% |
| | 100.0% | 100.0% | 100.0% |

$x^2 = 16.917$ $p < .001$ $G = .263$

Table 3.10 shows that persons that pleaded "not guilty" were paroled more frequently than were persons that pleaded "guilty," yet they were denied bail almost eleven times as often.

Table 3.10

Plea (Recoded)--Basic Bail Disposition

| Basic Bail Disposition | Plea: Guilty (N=82) | Not Guilty (N=131) |
|---|---|---|
| Released on recognizance (13) | 2.4% | 8.4% |
| Bail Set (179) | 96.4% | 76.4% |
| Bail Denied (21) | 1.2% | 15.2% |
| | 100.0% | 100.0% |

$x^2 = 15.429$ $p < .001$ $G = .300$

Table 3.11 shows the strong relationship between the plea and the amount of bail set. Persons that pleaded "guilty" had a low amount or a medium amount bail (under $400) set for them 97.5% of the time. Persons pleading "not guilty" only had a low amount or a medium amount of bail set for them 82.9% of the time.

Table 3.11

Plea--Amount of Bail Set

| Amount of Bail Set | Plea: Guilty (N=80) | Plea: Not Guilty (N=99) |
|---|---|---|
| $1--50 (124) | 90.0% | 52.6% |
| $51-400 (36) | 7.5% | 30.3% |
| over $400 (19) | 2.5% | 17.1% |
| | 100.0% | 100.0% |

$x^2 = 29.382$ $p < .001$ $G = .759$

II. Non-Legitimate Characteristics

It is hypothesized that certain non-legal factors will influence the bail decision. This study focuses on three different non-legitimate variables that may influence the bail decision for any particular case. These three variables are all defendant-related. They are the defendant's race, sex, and age.

Race, sex, and age are not legally acceptable criteria for making a bail decision. Any results that indicate that these variables do influence the bail decision will point to inequities in the judicial system. If no relationships are found to indicate that these three defendant-related characteristics do influence the bail decision, it

will be affirmed that "justice is indeed blind."

Table 3.12 summarizes all non-legitimate characteristic relationships examined. We have again taken the bail decision and the amount of bail as our dependent variables in this examination. The following categories were used in defining our independent variables:

Race (Black, Puerto Rican, White, Other)
Race--Recoded (Minority, White)
Age (Under 21, 21-30, 31-40, 41-50, 51-60, Over 60)
Sex (Male, Female)

Table 3.12

Non-Legitimate Characteristics

| Dependent Variable | Independent Variable | Gamma | $x^2$ | p |
|---|---|---|---|---|
| Basic Bail Disposition | Race | .204 | 4.107 | $>.05$ |
| | Race (Recoded and Previous Criminal Record Held Constant) | .383 | 13.197 | $>.05$ |
| | Age | .236 | 22.757 | $<.02$ |
| | Sex | .198 | 17.278 | $<.001$ |
| Amount of Bail Set | Race | .313 | 9.746 | $<.02$ |
| | Age | .397 | 33.913 | $<.001$ |
| | Sex | .084 | 1.703 | $>.05$ |

As can be seen, the non-legitimate characteristics are statistically significant for the dependent variables in most cases. For the basic bail decision three were found to be significant at the .05 level, and for the amount of bail granted two were found to be so significant. Age was the only variable found to be significant for both aspects of the bail decision.

Reconsidering our data, we find that three independent variables were significantly related to the basic bail decision. There was some variation in the strength of the relationships. In descending order, they are:

| Variable | Gamma |
|---|---|
| (1) Race-Recoded and Previous Criminal Record Held Constant | .385 |
| (2) Age | .236 |
| (3) Sex | .198 |

Similarly, insofar as the amount of bail set is concerned, we find a variation.

| Variable | Gamma |
|---|---|
| (1) Age | .397 |
| (2) Race | .313 |

Viewing each of the non-legitimate defendant-related characteristics separately, several relationships may be noted. Tables 3.13 -- 3.17 consider the significant variables.

Race

Since members of minority groups have frequently been the recipients of abuse by society, it is presumed that such might also be the case in the bail aspect of the judicial process. In this study, the "minority" classification includes Puerto Ricans and blacks. Puerto Ricans are included in the minority group for the distinction "Puerto Rican" is made on individual records in Rochester, New York.

When the race of the accused is compared to the basic bail disposition the data is significant. Yet, one sees that race seems to have little

effect on whether a defendant is paroled or whether he has bail set for him. However, blacks and Puerto Ricans were denied bail almost twice as frequently as were white persons. The data also indicated that persons from minority groups tend to be charged with more serious crimes than persons from the white majority. Crimes of a more serious nature usually have higher bail set than do minor crimes. This fact probably accounts for the finding that over 81% of the whites in the sample had a low bail set while only 67% of the minority group had low bail set (Table 3.13). Thus, it cannot be flatly asserted that bail denial is a result of the defendant's race.

Table 3.13

Race--Amount of Bail Set

| Amount of Bail Set | Race: Minority* (N=107) | White (N=143) |
|---|---|---|
| $1--50 (179) | 66.7% | 81.1% |
| $51-400 (48) | 29.4% | 13.1% |
| over $400 (12) | 3.9% | 5.8% |
| | 100.0% | 100.0% |

$x^2 = 9.746$ $p < .02$ $G = .313$

*Blacks and Puerto Ricans

The sample did indicate that the bail disposition was related to the race characteristic, if the accused had a previous criminal record. (See Table 3.14.) It is apparent that blacks with a previous record were denied bail at a much greater frequency than were other persons. No relationship was noted between race and the basic bail disposition, if the defendant had no previous record.

Table 3.14

Race--Basic Bail Disposition
(When the Defendant Has a Previous Criminal Record)

| Basic Bail Disposition | Race: Black (N=71) | Puerto Rican (N=7) | White (N=101) | Other (N=3) |
|---|---|---|---|---|
| Released on Recognizance(7) | 4.2% | 0.0% | 2.9% | 33.3% |
| Bail Set (162) | 83.2% | 100.0% | 93.2% | 66.7% |
| Bail Denied (13) | 12.6% | 0.0% | 3.9% | 0.0% |
| | 100.0% | 100.0% | 100.0% | 100.0% |

$x^2 = 13.197$ $.05 < p < .02$ G = .385

Age

The defendant-related characteristic of "age" does affect the bail decision. (See Tables 3.15 and 3.16) Persons under the age of 30 are denied bail twice as often as persons of other ages. A person in the 41-60 age level is paroled or has a money bail set over 95% of the time.

Table 3.16 indicates a steady correlation between low bail (under $50) and age. As age increases, the likelihood of a low money bail being set increases.

Table 3.15

Age--Basic Bail Disposition

| Basic Bail Disposition | Age: under 21 (N=76) | 21-30 (N=110) | 31-40 (N=78) | 41-50 (N-62) | 51-60 (N=49) | over 60 (N=33) |
|---|---|---|---|---|---|---|
| Released on Recognizance (21) | 3.9% | 8.1% | 5.1% | 1.6% | 8.1% | 0.0% |
| Bail Set (342) | 76.4% | 76.5% | 85.8% | 95.2% | 87.9% | 94.0% |
| Bail Denied (45) | 19.7% | 15.4% | 8.9% | 3.2% | 4.0% | 6.0% |
| | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% |

$x^2 = 22.757$ $p < .02$ G = .236

Table 3.16

Age--Amount of Bail Set

| Amount of Bail Set | Age: under 21 (N=61) | 21-30 (N=90) | 31-40 (N=68) | 41-50 (N=60) | 51-60 (N=47) | over 60 (N=32) |
|---|---|---|---|---|---|---|
| $1--50 (239) | 56.9% | 59.3% | 67.3% | 79.4% | 90.8% | 90.6% |
| $51-400 (67) | 31.1% | 22.2% | 26.5% | 15.2% | 6.9% | 6.2% |
| over $400 (31) | 12.0% | 18.5% | 6.2% | 5.0% | 2.3% | 3.1% |
| | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% |

$x^2 = 33.913$ $p < .01$ $G = .397$

Sex

As seen in Table 3.17, there is a very slight relationship between the sex of the defendant and the basic bail disposition. Women are released on their own recognizance five times more frequently than are men. Yet females are denied bail more frequently than are males. The data indicates no relationship between the amount of bail set and the defendant's sex.

Table 3.17

Sex--Basic Bail Disposition

| Basic Bail Disposition | Sex: Male (N=394) | Female (N=22) |
|---|---|---|
| Released on Recognizance (21) | 4.0% | 22.7% |
| Bail Set (350) | 85.6% | 59.2% |
| Bail Denied (45) | 10.4% | 18.1% |
| | 100.0% | 100.0% |

$x^2 = 17.278$ $p < .001$ $G = .198$

It has been noted that six of the legitimate defendant-related characteristics are of influence on either the bail disposition or the amount of bail set. Three non-legitimate variables influence the bail disposition and/or the amount of bail set. Table 3.18 shows the intercorrelation of the variables that influence the basic bail disposition. Table 3.19 shows the intercorrelation of variables for the amount of bail set.

Viewing Table 3.18 we find moderate to strong statistically significant correlations between the type of criminal charge and other variables; plea (recoded) and other variables; and type of criminal record and other variables. The variables of age and sex have weak to strong correlations (both non-statistically and statistically significant) with other variables as concerns the basic bail disposition.

Since we note so many moderate/strong intercorrelations between variables, we cannot assume that the dependent variable of amount of bail set can be viewed in terms of each independent variable separately. When analyzing the data, attempts were made to control for variables. However, due to the small sample size, this led to difficulties. Controlling for variables resulted in numerous categories with few and/or no cases. Thus, for most variables, data using controls were not included.

Table 3.19 shows the interrcorrelation of variables for the amount of bail set. Just as for the intercorrelation of variables for the basic bail disposition, we find a range of weak to strong correlations. Again we must conclude that the dependent variable of amount of bail set is influenced by several independent variables. The small sample size again made it impossible to control for variables and still retain an accurate representation of the defendants arraigned in the Rochester, New York, Criminal Court in 1970. Further discussion of the intercorrelation of all variables is included in the final chapter.

## Intercorrelation of Variables[1] for Basic Bail Disposition

Table 3.18

| | | Legitimate | | | Non-Legitimate | | |
|---|---|---|---|---|---|---|---|
| | | (1) | (2) | (3) | (4) | (5) | (6) |
| Legitimate | (1) Type of Crime | | | | | | |
| | (2) Plea (Recoded) | .904* | | | | | |
| | (3) Type of Criminal Record | .511* | .491* | | | | |
| Non-Legitimate | (4) Race (Recoded and Previous Criminal Record Held Constant) | .282 | .320 | .221 | ___ | | |
| | (5) Age | .430* | .626* | .168* | .205* | ___ | |
| | (6) Sex | .064 | .535* | .159 | .089 | .138 | ___ |

[1] Variables significant at .05 level

"Plea" eliminated because of similiarity to "Plea (Recoded)"

* Significant at .05 level

Table 3.19

Intercorrelation of Variables[1] for Amount of Bail Set

| | | Legitimate | | | | | | Non-Legitimate | |
|---|---|---|---|---|---|---|---|---|---|
| | | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
| Legitimate | (1) Type of Crime | ___ | | | | | | | |
| | (2) Multiple Offense | .670* | ___ | | | | | | |
| | (3) Type of Criminal Record | .491* | .402* | ___ | | | | | |
| | (4) Residence | .853* | 1.000* | .529* | ___ | | | | |
| | (5) Alias | .409* | | .345* | .559* | ___ | | | |
| | (6) Plea (Recoded) | .904* | .750* | .511* | .937* | | ___ | | |
| Non-Legitimate | (7) Race | .224 | .139 | .214 | .080 | .158 | .358* | ___ | |
| | (8) Age | .430* | .549* | .168* | .667* | .236* | .626* | .205* | ___ |

[1] Variables significant at .05 level

*Significant at .05 level

Chapter 4

# Conclusion

## Summary of Findings

As noted in the previous chapter, both legitimate and non-legitimate defendant-related characteristics apparently influence the bail decision. Both aspects of the bail decision, i.e. the basic bail disposition and the amount of bail set, were seemingly affected.

The data affirmed that police and assistant district attorney practices do conform in part to their conceptualization of what they are authorized to consider in making the bail recommendation and/or setting bail. However, it was also noted that variables other than those admittedly considered also influence the bail decision.

The assistant district attornies and the police state that they consider what the accused has to fear in terms of sentencing, when making the bail recommendation. This was found to be true. The police stated that they also consider the defendant's family ties, community ties, and employment when setting bail. The type of crime committed is directly related to sentencing and was found to have a moderate influence on the basic bail disposition and a strong influence on the amount of bail set.

Neither the police nor the assistant district attornies state that they consider the defendant's plea when making a bail recommendation and/or set bail. However, plea is one of the legitimate variables that may influence both the bail disposition and the amount of bail set. There is a very strong correlation between plea and the type of crime.

This strong correlation probably accounts for the fact that persons pleading "guilty" consistently had lower bail set for them than did persons pleading "not guilty." It is particularly interesting to note that all persons pleading guilty to a lesser charge had bail set for them.

The previous criminal record of the defendant is presumably an influencing factor on the sentence received. Persons with extensive records, especially for similar offenses, are likely to receive more severe sentences than are persons without such records. However, the data was not significant for the variable "extent of previous criminal record" for either aspect of the bail decision.

It could also be presumed that multiple charges might result in multiple convictions. If such is the case, the defendant would have more to fear in terms of sentencing. However, results indicated no correlation between multiple offenses and whether the accused was released on his own recognizance, granted bail, or denied bail. There was a correlation between multiple offenses and the amount of bail set. As might be assumed, persons charged with more than one crime had higher bail set for them than did persons charged with only one crime.

One finding that could not be logically assumed is the relationship between the type of criminal record and the bail decision. Persons with criminal records completely the same or partially the same as the present charge were more likely to have bail set for them than were those charged with a crime unlike one in their record. But, as shown in Table 3.18, there is a moderate correlation between the type of criminal record and the type of crime. It is perhaps persons violating ordinances or committing misdemeanors that have bail set for them.

Persons with criminal records either partially or completely like the present charge have lower bail set for them than do persons with totally different criminal records. Again, we notice (Table 3.19) the moderate correlation between the type of crime allegedly committed and the type of criminal record.

The fact that a defendant does or does not have an alias may affect the amount of bail set. It is assumed that persons with an alias have weaker community ties for they have an avenue of escape from reality. Thus, one would assume that persons with a known alias would be deemed less reliable than persons with no known alias. Since the purpose of bail is to guarantee the accused's appearance in court, it may be assumed that persons with lower bail set for them have been adjudged more reliable by bail setting officials than have persons for which higher bail has been set. Yet, this survey of defendants arraigned in the Rochester, New York Criminal Court in 1970 clearly indicated that a person with an alias had a lower bail set than did someone with no alias.

Due to poor record keeping, it was impossible to get complete data on family and community ties of defendants. It is only the police that indicated that they consider such ties when setting bail. Although persons wishing to reform the bail system have emphasized that persons with strong family and community ties should be released on their own recognizance, these ties are not even admittedly considered by the assistant district attornies in Rochester, New York when making a bail recommendation.

The amount of bail set was apparently influenced by the race of the defendant. Defendants from minority groups were accorded lower

bail less frequently than were persons from the white majority. Since there are weak, statistically insignificant intercorrelations between "race" and all the other variables that may influence the amount of bail set (See Table 3.19,), it may be concluded that the accused's race may be influential on the amount of bail set. All judges in Rochester, New York are white. Before assuming prejudice on the part of the white judges toward minority group persons, it must be noted that judges sometimes set bail via the telephone. Thus, unless the judge had had previous visual contact with the defendant, he would be unaware of the defendant's race. It was impossible to determine the race of police officers who set bail for cases in the study. Race may also influence the basic bail disposition, when the defendant has a previous criminal record. Again, the bail system seems to work to favor the white majority, i.e. blacks and Puerto Ricans were denied bail more frequently than were whites.

The non-legitimate characteristic of age seems to influence both parts of the bail decision. The bail system as practiced in Rochester, New York works to the advantage of older defendants. Persons under the age of thirty are denied bail two to five times as often as those of any other age. There are statistically significant, moderate relationships between age, the type of crime, and the multiple offense variables. Thus, perhaps youths commit more multiple crimes and crimes of a more serious nature than do older persons. Younger persons (under age thirty) have medium and high bail set for them more frequently than do older defendants. This may again be related to the type of crime rather than the defendant's age.

Sex, the third non-legitimate defendant-related characteristic, apparently affects the basic bail disposition. Women were released on their own recognizance more frequently than were men. The inter-correlation between the sex and type of crime variables is extremely low, thus indicating a bias in the system to favor women over men.

Suggestions for Further Research

This study found a correlation between defendant related characteristics and the bail decision for defendants arraigned in the Rochester, New York Criminal Court in 1970. Further research could again focus on the Rochester, New York Criminal Court for another time period to determine whether or not the findings of this study are consistent over time.

It would be valuable to conduct similar empirical studies of other criminal courts to determine what (if any) defendant-related characteristics influence the bail decision in other courts. Comparisons should be made between the Rochester Court and courts serving areas unlike the Rochester, New York area. Other courts studied should include those serving a rural population, a homogeneous racial and ethnic population, a small population center, and a metropolitan area larger than Rochester.

This research focused only on the defendant-related characteristics and their relation to the bail decision. There is a lack of empirical reserach on many other aspects of the bail system. Other research could focus on court-related characteristics which may influence the bail decision. Possible court-related characteristics which may influence the bail decision include the individual judge

at the arraignment and the type of counsel.

Research could also view factors related to the actual posting of bail, i.e., who posts bail, whether bail is posted privately or through a bondsman, and the type of collateral posted, if any.

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